

These are the tentative rulings for civil law and motion matters set for Thursday, December 6, 2018, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Wednesday, December 5, 2018. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

**NOTE:** Effective July 1, 2014, all telephone appearances will be governed by Local Rule 20.8. More information is available at the court's website, [www.placer.courts.ca.gov](http://www.placer.courts.ca.gov).

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EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY **THE HONORABLE TODD D. IRBY** AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN **DEPARTMENT 32**, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

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**1. M-CV-0069944      Bank of America, N.A. vs. Pittman, Jennifer R.**

Plaintiff's unopposed motion for order deeming admissions admitted is granted. The matters encompassed in plaintiff's requests for admissions, set one, are deemed admitted.

**2. M-CV-0071638      Breit Wave MF SC Owner LLC vs. Craig, Emily**

The appearances of the parties are required for the hearing on defendant's petition for relief from forfeiture of lease.

**3. S-CV-0020322      Palos, Anthony et al. vs. Palos, Steven**

Defendant's Motion to Set Aside Default and Default Judgment

Ruling on Request for Judicial Notice

The request for judicial notice is granted under Evidence Code section 452.

Ruling on Motion

The motion is granted. Upon motion of the injured party, the court may set aside a void judgment. (Code of Civil Procedure section 473(d).) A judgment is void where a defendant was not served with a summons in a manner prescribed by statute. (*Dill v.*

*Berquist Construction co.* (1994) 24 Cal.App.4th 1426, 1444; *American Express Centurion Bank v. Zara* (2011) 199 Cal.App.4th 383, 387.) Defendant has presented sufficient evidence to show that he did not reside in California at the time of the purported service of process to challenge the validity of service of the summons.

The default, entered on May 15, 2007, and the default judgment, entered on October 15, 2007, are set aside.

#### Defendant's Motion to Quash Service of Summons

##### Ruling on Request for Judicial Notice

The request for judicial notice granted under Evidence Code section 452.

##### Ruling on Motion

The motion is granted. The plaintiff has the burden to prove the facts establishing proper service upon the defendant. (*Summers v. McClanahan* (2006) 140 Cal.App.4th 403, 413.) Plaintiff, however, has failed to present sufficient evidence to establish defendant was properly served. The proof of service on file states that defendant was served by a party that was not a registered process server. While this proof of service creates a presumption that service was proper, defendant has sufficiently rebutted that presumption with the evidence presented with his motion. (see *Dill v. Berquist Const. Co., Inc.* (1994) 24 Cal.App.4th 1426, 1441-1442; *Floveyor International, Ltd. v. Superior Court (Shick Tube-Veyor Corp.)* (1997) 59 Cal.App.4th 789, 795.) Further, plaintiff is not afforded the additional presumption that the facts stated in the proof of service of summons are true since declarant was not a registered process server. (Evidence Code section 647; *Rodriguez v. Cho* (2015) 236 Cal.App.4th 742, 750.) Plaintiff must present more than his own declaration to establish proper service, which he has not done here. For these reasons, the motion is granted.

The service of summons, filed on April 11, 2007, is quashed.

#### **4. S-CV-0028391            Higgs, Roy vs. Colliau, Russell W., et al**

This tentative ruling is issued by the Honorable Michael W. Jones. Oral argument shall be heard at 8:30 a.m. in Department 43:

The appearances of the parties are required for the OSC hearing on the status of bankruptcy.

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**5. S-CV-0033498                      Everett, Brian, et al vs. Pulte Group, Inc., et al**

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, it shall be heard at 8:30 a.m. in Department 43:

Plaintiff's Motion for Final Approval of Class Settlement and Motion for Attorneys' Fees and Costs

Plaintiff's unopposed motions for (1) final approval of class settlement and (2) motion for attorneys' fees, costs, and representative incentive fees are granted. The court has broad discretion to determine whether a settlement is fair, adequate, and reasonable. (*In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1389; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235.) When reviewing the fairness of the settlement, the court is to give due regard to the parties' agreement, ensuring that the agreement is not a product of fraud, overreaching parties, or collusion and that the settlement, as a whole, is fair, reasonable, and adequate. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1145.) A presumption of fairness exists where: (1) the settlement was reached through arms-length bargaining; (2) the investigation and discovery were sufficient to allow class counsel and the court to act intelligently; (3) class counsel is experienced in similar litigation; and (4) there is a small percentage of objectors. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.) The court has carefully reviewed and considered the stipulation of settlement and plaintiff's moving papers filed in connection with the motion. The court determines a sufficient showing has been made that the settlement is fair, adequate, and reasonable.

The court grants final approval of the joint stipulation and approves the \$179,588.99 in attorneys' fees and \$22,911.01 in costs. The court grants final approval of the class representative fees totalling \$40,000 with no more than \$5,000 to be paid per property. The court also incorporates by reference the findings and orders as outlined by the plaintiff in the proposed order. The court retains jurisdiction over the parties to enforce the terms of the judgment. (California Rules of Court, Rule 3.769(h).)

**6. S-CV-0039258                      Bushell, Susan v. Educational Media Foundation**

Defendant's Motion for Summary Judgment or, in the alternative, Summary Adjudications

Ruling on Objections

Defendant's objections are overruled in their entirety.

Plaintiff's objections are overruled in their entirety.

### Ruling on Motion

The motion is denied. The trial court shall grant a motion for summary judgment if ðall the papers submitted show that there is no triable issue as to any material fact and the moving party is entitled to a judgment as a matter of law.ö (Code of Civil Procedure section 437c(c).) A party to the action may also move for summary adjudication if that party contends there is no merit to one or more of the causes of action. (Code of Civil Procedure section 437c(f)(1).) However, a motion for summary adjudication shall only be granted where it completely disposes of a cause of action. (*Ibid.*) In reviewing a motion for summary judgment, the trial court must view the supporting evidence, and inferences reasonably drawn from such evidence, in the light most favorable to the opposing party. (*Aguilar v. Atlantic Richfield Company* (2001) 25 Cal.4th 826, 843.) The court may not grant a motion for summary judgment and/or adjudication based upon inferences if they are contradicted by other inferences or evidence that raise a triable issue of material fact. (*Aguilar v. Atlantic Richfield Company, supra*, at p. 856.) The existence of equally conflicting evidence requires a trial to resolve the disputes. (*Kid's Universe v. In2Labs* (2002) 95 Cal.App.4th 870, 881.) Even where the evidence suggests a strong possibility, or even a strong likelihood, that a trier of fact would resolve the issues in favor of the moving party, where the issues and evidence are close, it does not conclusively establish there is no existence of a triable issue of material fact. (see *Binder v. Aetna Life Ins. Co.* (1999) 75 Cal.App.4th 832, 837-838.)

Upon review of the submitted evidence, there exist triable issues of material fact regarding whether the parties entered into a joint venture agreement [Plaintiff's Additional SSUMF Issue 1, Nos. 1-11], whether the parties entered into a verbal contract where plaintiff has an unpaid revenue share [Id. at Issue 2, Nos. 1-5], whether the payments for tower rental were pass through payments [Id. at Issue 3, Nos. 1-7, Issue 6 Nos. 1-12], and the parties were involved in long-term business negotiations where plaintiff continued to allow for the usage of his broadcast translators [Id. at Issue 4, Nos. 1-7; Issue 5, Nos. 1, 3-17]. Since the evidence shows triable issues of material fact as to the six causes of action, the motion is denied in its entirety.

#### **7. S-CV-0037724                    Ahlberg, Cynthia et al vs. Centex Homes**

The demurrer and motion to disqualify counsel are continued to Thursday, January 10, 2019 at 8:30 a.m. in Department 42 to be heard by the Honorable Charles D. Wachob.

#### **8. S-CV-0039782                    Meinyer, Dennis R et al vs. Eureka Development Company**

The motion for leave to amend the complaint is dropped from the calendar as no moving papers were filed with the court.

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**9. S-CV-0039888                      Parmar, LLC vs. Voyager Restaurant Group, Inc.**

Defendant Voyager Restaurant Group, Inc.'s motion to strike or tax costs is granted in part. Item 16 is taxed in its entirety as these attorney's fees and costs are subject to a separate order previously entered by the court. The remainder of the request is denied as the costs are reasonable.

Plaintiff Parmar LLC's memorandum of costs, filed on October 16, 2018, is taxed in the amount of \$6,535.16. Plaintiff is awarded \$10,960.21 in costs.

**10. S-CV-0039952                      Fetter, George vs. County of Placer et al**

The motion for reconsideration is dropped from the calendar as no moving papers were filed with the court.

**11. S-CV-0039954                      Larrabee, Tereasa et al vs. Jones, Maxwell Eric et al**

The appearances of the parties are required for the hearing on petitioners' request to amend court ruling on minors' compromise petitions. The appearances of the minors for the hearing are waived.

**12. S-CV-0041832                      Digrazia, Roland et al vs. Greenpoint Mortgage Funding, Inc.**

Defendants Fay Servicing, LLC and Citibank, N.A.'s Demurrer to the Complaint

Ruling on Request for Judicial Notice

The request for judicial notice is granted under Evidence Code section 452.

Ruling on Demurrer

The demurrer is sustained without leave to amend. A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (Code of Civil Procedure section 430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) The allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) A review of the first, second, third, fourth, fifth, and seventh causes of action shows that allegations are conclusory in nature and fail to allege sufficient facts against the moving defendants to support any of these claims. The demurrer is sustained without leave to amend since plaintiffs failed to file an opposition to the demurrer, which is construed as an abandonment of these claims. (*Herzberg v. County of Plumas* (2005) 133 Cal.App.4th 1, 20.)

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The petition for release of property from lien is continued to December 20, 2018 at 8:30 a.m. in Department 42 at the request of the moving party.

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